**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:	Docket 04-IEP-1K
The Preparation of the *2005 Integrated Energy Policy Report*	NOTICE OF COMMITTEE HEARINGS AND AVAILABILITY OF THE COMMITTEE DRAFT ENERGY REPORT

**COMMENTS OF THE ALLIANCE FOR RETAIL ENERGY MARKETS
ON THE DRAFT 2005 INTEGRATED ENERGY POLICY REPORT**

In its Notice issued on September 15, 2005, the California Energy Commission ("CEC") noted the availability of the 2005 Committee Draft of the 2005 Integrated Energy Policy Report ("IEPR"). The Notice provided a schedule for various workshops to be held regarding discrete sub-topics in the IEPR and invited comments from interested parties. The Alliance for Retail Energy Markets ("AReM") responds to this request with the following comments on issues of interest in the latest draft of the IEPR.

AReM is a regulatory alliance of Energy Service Providers ("ESPs") dedicated to the development of competitive retail market opportunities for California's electricity consumers. Several AReM members provide renewable energy options to their customers and are participants in the CEC's Renewable Energy Program ("REP"). AReM's comments therefore focus on the following two areas: (1) Renewable Portfolio Standard ("RPS") implementation issues for ESPs and Community Choice Aggregators ("CCAs"); and (2) the attractiveness of a core/noncore structure as a way of addressing the "coming and going rules" for future direct access.

I. The Importance of Developing RPS Rules that Reflect the Differences Among Different Types of Load Serving Entities

The draft IEPR discusses RPS issues and the importance of ensuring compliance by all Load-Serving Entities ("LSEs"):

> The 2003 Energy Report also recommended extending the RPS to all retail sellers of electricity, including publicly owned utilities (POUs). In the RPS statute, retail sellers include electric service providers (ESPs), and community choice aggregators (CCAs). While ESPs and CCAs have the same RPS obligations as IOUs, there are no rules in place for their participation. To meet the state's goals for renewable energy, the state needs to develop rules for these entities to ensure that RPS targets, eligibility requirements, and compliance dates are applied consistently among all participants. The absence of rules for ESPs and CCAs is delaying the state from reaching its 20 percent renewable target by 2010.[1]

AReM fully concurs with the CEC as to the importance of ensuring compliance with the state's RPS standards. AReM is in fact involved quite extensively in the California Public Utilities Commission ("CPUC") efforts to implement RPS standards and its members are committed to compliance with the state's RPS standards.[2] The draft IEPR notes the existence of that CPUC proceeding and cites the availability of a proposed decision issued by ALJ Allen that would essentially impose on ESPs and CCAs precisely the same obligations as are to be imposed on the investor-owned utilities ("IOUs"): "The CPUC made some progress toward developing RPS procurement and compliance requirements for ESPs and CCAs by issuing a draft decision in June 2005 setting forth the basic parameters for RPS participation by ESPs, CCAs, and small and multi-jurisdictional utilities."[3]

[1] Draft IEPR at p. 91.
[2] *See*, Order Instituting Rulemaking to Implement the California Renewables Standard Program, Docket R.04-04-026.
[3] Draft IEPR at p. 96. *See also*, fn. 133 at the same page.

However, as a result of timing issues, the draft IEPR omits discussion of a quite different alternate proposed decision ("APD") issued by CPUC President Michael Peevey on September 22, 2005. That APD, which post-dated the issuance of the draft IEPR, also requires that all ESPs and CCAs must comply with the state's RPS goals, stating that the CPUC will, "require all entities to comply with the fundamental aspects of the RPS program, including procuring 20% of their retail sales from renewable energy sources by 2010, increasing their procurement of renewable energy by at least 1% of their retail sales per year, and reporting to the Commission on their compliance with these requirements."[4]

However, President Peevey's APD also recognizes that the Commission has discretion to determine the manner in which such entities will comply with those requirements. His decision approaches the task of determining the manner in which ESPs/CCAs should participate in the RPS program by noting:

> We approach this question as an issue of policy. ESPs and CCAs each are subject to separate and distinct legal and regulatory requirements. Although they are each subject to certain requirements of this Commission as assigned by the Legislature, neither is regulated as a "public utility" as defined by the Public Utilities Code, nor are they subject to Commission regulatory authority as a matter of course. Instead, the Commission is granted specific regulatory authority over these entities for particular issues, in this case, RPS. Because of this, each of these entities in existence or planned operates under a business model that is different from a regulated public utility.[5]

President Peevey then states that"

> Therefore, we do not believe it is reasonable to require these entities to be subject to the exact same steps for RPS implementation purposes as the utilities we fully regulate. We also do not believe that it is necessarily reasonable to subject ESPs and CCAs to the same RPS process requirements as each other, simply because they are not utilities. A CCA, for example, will likely be answerable to the political authorities in the community in which it is

[4] APD at p. 1.
[5] Id., at p. 11.

> operating, in addition to its customers. The business of an ESP, on the other hand, is much more highly sensitive to price pressures than a utility, which has captive customers, at least at this time. Thus, we are sensitive to the particular requirements and pressures of each type of entity and do not necessarily want to impose a "one size fits all" RPS regulatory scheme.

It should be noted that this conclusion is in stark contrast to the draft IEPR finding that, "The primary problems with the RPS program" include "The uneven application of RPS targets to all retail sellers in the state."[6] The simple fact is that regulated utilities and unregulated ESPs and CCAs are very different entities, with different business models and different regulatory protections. ESPs and CCAs, for example, do not have regulated rates, exclusive franchised service territories and guaranteed rates of return. It is entirely appropriate to find, as does the Peevey APD, that the CPUC will be exercising its authority over ESPs, CCAs, and small and multi-jurisdictional utilities in five basic areas: 1) requiring meeting the 20% goal; 2) adding at least 1% of retail sales in renewable sales per year; 3) reporting progress toward these goals to the Commission; 4) utilizing flexible compliance mechanisms; and 5) being subject to penalties. However, it would be inappropriate to find that the implementation of these requirements mandate precisely the same approach for different types of LSEs.

Therefore, AReM strongly recommends that the CEC <u>remove from the draft IEPR</u> the expression that a "primary problem" with the state's RPS program is the "uneven application of RPS targets to all retail sellers in the state." Further, if the ALJ Allen PD is to be referenced, then the responsive APD of President Peevey should also be mentioned. In conclusion, the draft IEPR correctly states that, "The state needs to act now to ensure that RPS

[6] Draft IEPR at p. 92.

standards, including eligibility, targets, and compliance dates, are applied to all retail sellers within the state."[7] AReM agrees. However, the suggestion that the CPUC may not use its discretion to structure rules for LSE compliance that reflect each entities' different business models is an exaltation of form over substance and any such suggestion should be deleted from the IEPR.

II. The Need to Implement a Core/Noncore Market Structure as a Means of Addressing the "Coming and Going" Rules for Future Direct Access

The draft IEPR discusses the issue of departing load and notes that the IOUs identified the risk of departing load to ESPs and CCAs "as their single greatest source of uncertainty in planning for and procuring future resources."[8] While the uncertainty associated with departing load associated with direct access and CCAs may make planning and procuring for the IOUs more difficult, it is not impossible. Utilities have planned around transitory customers before and can minimize their exposure simply by having a diversified portfolio with short, medium and long-term contracts. Moreover, the uncertainty that the IOUs face in making future procurement plans is no less daunting than the uncertainty that direct access customers face about whether or not they will continue to have the option to exercise choice, whether they can add new accounts and what their cost exposure to the utility will be if they do exercise their choice.

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[7] Id., at p. 95.
[8] Draft IEPR at p. 48.

Further, at least two of the utilities are extremely familiar with the migration of natural gas customer load that occurred when the state implemented a core/noncore market in the late 1980s. Somehow the employees of these gas utilities managed to cope with the very same load uncertainty about which their electric brethren apparently struggle. The IOUs' gas counterparts seemed to have employed the creativity and imagination to deal with the same type of customer load uncertainty that their electric brethren are experiencing and seemed to have managed their business risk quite handily. In short, once a decision is made about the structure of California's retail electric market, the IOUs will manage their business to that structure. It is the enduring uncertainty about the direction in which the State's energy policy will proceed that allows everyone, including the IOUs, to wring their hands over the inability to plan.

Nevertheless, even if the complaints of the IOUs are accorded an inappropriate level of credence, there is a simple and effective remedy for establishing load certainty. That remedy would be the establishment of a core/noncore market in the electric industry, analogous to what had been successfully implemented in California's natural gas market for now over fifteen years. Further, it should be noted that a Key Action in the latest version of the state's Energy Action Plan is to, "Develop rules to promote an effective core/non-core retail market structure, including mechanisms to guard against cost-shifting, preserve reliability, promote energy efficiency goals, achieve RPS goals and maintain the loading order for all load-serving entities."[9] Establishment of a core/noncore market would provide precisely the load stability about which the IOUs express such great concern.

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[9] Energy Action Plan, at p. 9.

The draft IEPR recommends that, "Because the remaining uncertainty about coming and going rules, especially return rights, is inhibiting investment in new generation, the Energy Commission recommends that the CPUC begin immediately to establish appropriate coming and going rules for departing load. The CPUC should establish a schedule that would provide a sound set of departing load rules by the end of 2006."[10] In fact, it is not the coming and going rules that create the problem when customers migrate. Rather, it is the fact that the utility plans and purchases for all types of customers as if all customers have the same likelihood of going into the retail market or remaining with the utility. In fact, in a core/noncore environment, most of the customers will remain with the utility and the utility can make long-term investments on their behalf. Some of the commercial customers will remain, and the utility can do a probabilistic assessment and enter into medium term contracts for that load. For the load at risk of migration, the utility can enter into shorter-term contracts. It is important that the utility plan and procure for non-core customers that are most likely to leave to receive a short-term procurement service from the utility.

Therefore, AReM concurs that the, "CPUC should establish a schedule that would provide a sound set of departing load rules by the end of 2006," and adds that the examination of the coming and going rules should be done in the context of implementing a core/noncore market, as that will provide precisely the certainty sought by the IOUs. Indeed, in view of the switching exemption decision that was implemented in 2003,[11] there is little or no need to conduct such an examination of "coming and going" rules unless it is in the context of a move to the new market structure urged by the Energy Action Plan, and then, only as a transition

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[10] Draft IEPR at p. 49.
[11] *See,* D.03-05-034.

mechanism, until the utility adjusts its procurement to be more reflective of the types of customers it serves and to rationalize its procurement activity with its customer commitment.

The draft IEPR recommendation makes no sense if in fact there is to be no change to the current market structure. "Coming and going" rules already exist and are embodied in the CPUC's switching exemption rules. Therefore, the CEC's recommendation in this respect should be clarified to indicate that the need to "establish appropriate coming and going rules for departing load" should be done in the context of a move to a core/noncore market structure that is called for in the state's Energy Action Plan.

AReM thanks the CEC for its consideration of the comments provided above.

Respectfully submitted,

Alliance for Retail Energy Markets

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